

HANSON BRIDGETT LLP
GARNER K. WENG, SBN 191462
gweng@hansonbridgett.com
LAWRENCE M. CIRELLI, SBN 114710
lcirelli@hansonbridgett.com
CHRISTOPHER S. WALTERS, SBN 267262
cwalters@hansonbridgett.com
425 Market Street, 26th Floor
San Francisco, California 94105
Telephone: (415) 777-3200
Facsimile: (415) 541-9366

Attorneys for Plaintiff
ROCKET DOG BRANDS, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROCKET DOG BRANDS, LLC, a
Delaware limited liability company,

Plaintiff,

v.

GMI CORPORATION, a New York
corporation,

Defendant.

CASE NO. C12-4643 SI (NJV)

**JOINT CASE MANAGEMENT
STATEMENT**

Date: July 19, 2013

Time: 3:00 p.m.

Plaintiff/Counter-Defendant Rocket Dog Brands, LLC ("Plaintiff" or "Rocket Dog Brands") and Defendant/Counter-Claimant GMI Corporation ("Defendant" or "GMI") jointly submit this Updated Case Management Statement in connection with the upcoming July 19, 2013 Further Case Management Conference.

JURISDICTION AND SERVICE

This Court has diversity jurisdiction over this contract action under 28 U.S.C. § 1332 because the parties are citizens of different States and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

Defendant, through its counsel, waived service of the summons and complaint.

1 BRIEF STATEMENT OF PRINCIPAL DISPUTED FACTS

2 Rocket Dog Brands and GMI entered into an agreement on or about October 1,
 3 2010. Rocket Dog Brands alleges that GMI did not fulfill its obligations under the
 4 agreement, including by failing to reach minimum sales, pay required royalties to Rocket
 5 Dog Brands, adequately promote or develop the market for the footwear products, satisfy
 6 all reporting requirement, and obtain required approval for subcontracting. Because of
 7 these alleged failures, Rocket Dog Brands has asserted that GMI breached the
 8 agreement and that Rocket Dog Brands is entitled to damages for breach of contract and
 9 breach of the covenant of good faith and fair dealing, and Rocket Dog Brands has asked
 10 for monetary damages that it has estimated to be at least \$880,000.

11 GMI denies that it breached the agreement or the covenant of good faith and fair
 12 dealing, and denies that it is liable to Plaintiff for any reason. GMI alleges that Rocket
 13 Dog Brands did not fulfill its obligations under the contract, made misrepresentations to
 14 GMI in the course of negotiating the contract, and unfairly competed with GMI after the
 15 contract was signed, and GMI has asserted a counterclaim against Rocket Dog Brands
 16 alleging claims for breach of contract, breach of the implied covenant of good faith and
 17 fair dealing, fraud, intentional interference with prospective economic advantage,
 18 negligent interference with prospective economic advantage, and unfair business
 19 practices. Rocket Dog Brands disputes GMI's counterclaim, denies that it breached the
 20 agreement in any way or acted in any other way harmful to GMI, and denies that it is
 21 liable to GMI for any reason.

22 LEGAL ISSUES

23 The following are the central legal issues in dispute:

- 24 1. Whether Defendant or Plaintiff, through acts or omissions, breached the
- 25 parties' written contract.
- 26 2. The extent of Defendant and Plaintiff's damages, if any.

27 Defendant also contends that the following issues exist:

1 against Defendant.

2 B. Defendant

3 GMI has discussed its records preservation obligations with counsel and has taken
4 steps to preserve all documents evidencing or related to Plaintiff's claim against GMI and
5 GMI's claim against Plaintiff.

6 INITIAL DISCLOSURES

7 The parties served their respective initial disclosures on January 11, 2013.

8 DISCOVERY

9 A. Scheduling

10 The present scheduling order sets fact discovery cutoff for August 9, 2013 and the
11 expert discovery cutoff is October 11, 2013.

12 Defendant's Position:

13 The present schedule was entered on April 15, 2012, before the May 22, 2013
14 settlement conference before Magistrate Judge Vadas and before the parties agreed to
15 continue settlement discussions and schedule a status conference with Magistrate Judge
16 Vadas on June 25, 2013, and before the parties extended the time for a continuing Case
17 Management Conference with the Court by five weeks. Given these events, Defendant
18 does not believe an August 9, 2013 discovery cut-off is practicable and believes that an
19 extension of the discovery deadlines in the matter do not have to alter the trial schedule
20 set by the Court to begin trial on February 3, 2014. Defendant requests, at a minimum,
21 that the fact discovery cutoff of August 9, 2013 be extended by five weeks to September
22 13, 2013, but, as detailed below, believes that a discovery cutoff of October 1, 2013 is the
23 most reasonable to accommodate the Summary Judgment briefing and hearing
24 schedule.

25 As set forth *infra* at the Scheduling section of this Statement, Defendant proposes
26 filing a Summary Judgment motion on two significant contract matters that can be
27 resolved on the undisputed facts to date, to hearing that summary judgment motion on
28

1 August 16, 2013, and to extending the deadline for fact discovery until October 1, 2013
2 so that discovery can occur following any summary judgment ruling. As discussed,
3 Defendant's proposed schedule does not change the trial date or pretrial conference the
4 parties had already agreed to and entered by the Court on April 15, 2013 (D.E. 35). As of
5 the filing of this Statement, the parties are continuing to meet and confer on the schedule
6 to see if agreement can be reached. Pursuant to the Court's July 1, 2012 Order on GMI's
7 *ex parte* application to extend its time to respond to outstanding written discovery, GMI is
8 serving its responses and objections to Plaintiff's first set of discovery today, July 12,
9 2013. Defendant is also moving today for Summary Judgment and for a short stay of any
10 further discovery pending resolution of the Summary Judgment motion.

11 Defendant strongly objects to Plaintiff's proposal that, in the event discovery is
12 extended, neither party be permitted to serve further written discovery. Defendant
13 respectfully requests to discuss the issue further with the Court at the Case Management
14 Conference on July 19, 2013. The parties just had their settlement status conference with
15 Magistrate Judge Vadas on July 9, 2013 and GMI would like to proceed with early
16 Summary Judgment in an effort to resolve the dispute because settlement at this juncture
17 does not seem possible absent a Court ruling on two critical contract issues. If the Court
18 does not grant GMI's Summary Judgment Motion, GMI will be prejudiced in seeking
19 necessary discovery in this matter and should not be deemed to have "foregone the
20 opportunity to propound further written requests" as Plaintiff claims because of efforts to
21 resolve the dispute through settlement and early summary judgment.

22 Plaintiff's Position:

23 Defendant's proposal to stay all discovery until after ruling on its motion for
24 summary judgment is prejudicial to Rocket Dog Brands. First, Defendant's proposal
25 seeks to deprive Rocket Dog Brands of the opportunity to conduct discovery that may
26 result in information that is relevant to issues that Defendant may raise in its motion.
27 Second, Defendant's proposed case schedule seeks to condense fact discovery, expert
28

1 discovery, and remaining motion practice into a period of weeks, which will result in an
 2 excessive burden on Rocket Dog Brands from purely financial and feasibility standpoints.
 3 Third, Defendant has not propounded written discovery in this case, and by seeking to
 4 extend the fact discovery cutoff now seeks to obtain a benefit that it has already given up,
 5 which will likely result in further increased cost to Rocket Dog Brands. For at least these
 6 reasons, Rocket Dog Brands opposes Defendant's proposed extensions and changes to
 7 the case schedule.

8 To the extent the Court is inclined to consider a revised case schedule, Rocket
 9 Dog Brands does not object to extending all dates to allow for orderly and non-prejudicial
 10 proceedings. However, although Rocket Dog Brands does not object to extending the full
 11 case schedule by a short period, it will ask that in the event the discovery cutoff is
 12 extended, that neither party be permitted to serve further written discovery as the
 13 deadline for doing so has passed and each party has therefore already foregone the
 14 opportunity to propound further written requests.

15 B. Subjects

16 Plaintiff has propounded initial rounds of discovery on several subjects related to
 17 the obligations and performance of the parties' licensing agreement, and Plaintiff may
 18 need to take further discovery the extent permitted under the Federal Rules on at least
 19 the following subjects:

- 20 1. Defendant's performance of its contractual obligations.
- 21 2. Defendant's income from activities related to its performance of the
- 22 agreement.
- 23 3. Defendant's ability to perform its contractual obligations, including its sales,
- 24 distribution, marketing, and development capabilities for footwear products, and ability to
- 25 satisfy reporting and payment requirements.
- 26 4. Any roles of Defendant's related and affiliated companies in fulfilling its
- 27 contractual obligations.
- 28

5. Defendant's corporate structure and relationships.

Defendant intends to seek discovery to the extent permitted under the Federal Rules on at least the following subjects:

1. Plaintiff's performance of its contractual obligations.

2. Plaintiff's conduct hindering Defendant's ability to perform certain contractual obligations.

3. Plaintiff's representations and omissions to GMI prior to and during the negotiation and performance of the contractual agreement at issue.

4. Plaintiff's knowledge of GMI's third-party economic relationships and interference with such relationships.

C. Limitations or Modifications

The parties do not currently believe there is a need to limit or modify the applicable rules for discovery.

D. Privilege Assertions

The parties agree to prepare privilege logs detailing any claims of privilege.

E. Confidentiality

The parties are presenting conferring on an appropriate stipulated protective order that they will endeavor in good faith to submit to the Court shortly.

F. Electronic Discovery

The parties agree to meet and confer to consider and set parameters for searching (including among other things search terms and custodians) and producing electronically stored information.

CLASS ACTIONS

Not applicable.

RELATED CASES

None.

1 RELIEF

2 A. Plaintiff

3 Plaintiff seeks monetary damages and attorneys' fees.

4 B. Defendant

5 Defendant seeks monetary and punitive damages and attorneys' fees. On July 9,
6 2013 Defendant made an Offer of Judgment per Fed. R. Civ. P. 68. The offer will expire
7 on July 23, 2013.

8 SETTLEMENT AND ADR

9 The parties engaged in a settlement conference with Magistrate Judge Nandor J.
10 Vadas on May 22, 2013. Although a settlement was not reached, some progress was
11 made and the parties and Judge Vadas have discussed the possibility of conducting a
12 follow-up session. Defendant has declined to participate in a further settlement
13 conference with Judge Vadas. A status conference with Judge Vadas is set for
14 September 10, 2013.

15 CONSENT TO MAGISTRATE JUDGE

16 Plaintiff has declined to have a magistrate judge conduct all further proceedings.

17 OTHER REFERENCES

18 At this time, the parties do not believe there is a need for reference to special
19 masters or other references.

20 NARROWING OF ISSUES

21 The parties will endeavor in good faith to narrow the issues, claims, and defenses.
22 Defendant believes the summary judgment motion to be filed July 12, 2013 and
23 scheduled for a hearing on August 16, 2013 should significantly narrow or focus the case
24 going forward. Rocket Dog Brands believes that Defendant's summary judgment motion
25 is without merit and will only serve to drive up both parties' fees and costs.

26 EXPEDITED PROCEDURES

27 At this time, the parties are not aware of any need for expedited procedures.

SCHEDULING

The Court has ordered the following case schedule, with all other provisions of the Court's January 22, 2013 Pretrial Preparation Order remaining in effect:

EVENT	DATE (and time if applicable)
NON-EXPERT DISCOVERY CUTOFF	08/09/13
DESIGNATION OF EXPERTS	08/30/12
REBUTTAL EXPERTS	09/20/13
EXPERT DISCOVERY CUTOFF	10/11/13
DISPOSITIVE MOTIONS FILING DEADLINE	11/01/13
OPPOSITION TO DISPOSITIVE MOTIONS	11/22/13
REPLY ON DISPOSITIVE MOTIONS	12/13/13
LAST DAY TO HEAR DISPOSITIVE MOTIONS	12/20/13 at 9:00 a.m.
PRETRIAL CONFERENCE	01/21/14 at 3:30 p.m.
TRIAL	02/03/14 at 8:30 a.m.

Defendant's Proposed Revised Case Schedule, to which Rocket Dog Brands objects for the reasons set forth above in the Discovery section:

EVENT	DATE
Summary Judgment Motion	07/12/13
Continuing Case Management Conference	07/19/13 at 3:00 p.m.
Opposition to Summary Judgment Motion	07/26/13

Reply to Summary Judgment Motion	08/02/13
Summary Judgment Hearing	08/16/13 at 9:00 a.m.
Non-Expert Discovery Cutoff	08/09/13 10/1/13
Initial Expert Reports	8/30/12 10/22/13
Responsive Expert Reports	9/20/13 11/12/13
Close of Expert Discovery	10/11/13 11/19/13
Additional Dispositive Motions	11/22/13 11/22/13
Opposition to Dispositive Motions	11/22/13 12/06/13
Reply on Dispositive Motions	12/13/13
Last Day to Hear Dispositive Motions	12/20/13 at 9:00 a.m.
Pre-Trial Conference	01/21/14 at 3:30 p.m.
Trial	02/03/14 at 8:30 a.m.

TRIAL

The parties have requested a jury trial and expect the trial to take approximately 5-7 court days.

INTERESTED PARTIES

Pursuant to Civ. L.R. 3-16, the parties have filed Certifications of Interested Entities or Persons. For Plaintiff, other than Rocket Dog Brands Holdings, LLC and Rocket Dog Brands Corp., there are no other interested parties to report. For Defendant, other than GMI USA Corp. and Stefano Maroni, there are no other interested parties to report.

DATED: July 12, 2013

HANSON BRIDGETT LLP

By: /s/ Christopher S. Walters

GARNER K. WENG

LAWRENCE M. CIRELLI

CHRISTOPHER S. WALTERS

Attorneys for Plaintiff

ROCKET DOG BRANDS, LLC

DATED: July 12, 2013

GREENBERG TRAURIG, LLP

By: /s/ Sarah E. Barrows

SARAH E. BARROWS

Attorneys for Defendant

GMI CORPORATION

I, Christopher S. Walters, am the ECF User whose ID and password are being used to file this JOINT CASE MANAGEMENT CONFERENCE STATEMENT AND RULE 26(f) REPORT.

In compliance with General Order 45, X.B., I hereby attest that counsel whose e-signature appears on the foregoing signature page has concurred with this filing.

Dated: July 12, 2013

By: /s/ Christopher S. Walters

Christopher S. Walters